

IOWA BOARD OF EDUCATIONAL EXAMINERS

MALVERN COMMUNITY SCHOOLS,	)	Case No. 05-31 X
	)	DIA No. 06BEE001
Complainant,	)	License No. 234881
)	
STEVE LANE,)	
	)	Final Order
Respondent.)	

This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. The hearing was held before Administrative Law Judge Margaret LaMarche on March 6, 2006. On March 27, 2006, Judge LaMarche issued a proposed decision. The proposed decision was served upon the Respondent, the Complainant, and the Board.

The Board considered the proposed decision at its regular meeting on April 7, 2006. After examining the proposed decision, the Board unanimously approved a motion not to initiate review of the proposed decision. No appeal was received by the Board within the time allowed by rule.

ORDER

THEREFORE, pursuant to Iowa Code section 17A.15(3) (2005) and 282 IAC 11.27(2), the Proposed Decision recommending the issuance of a public Letter of Reprimand stands as the Board's final ruling in this matter. **The Respondent is hereby reprimanded based upon the findings and conclusions of the May 27, 2006, Proposed Decision.**

Dated this 1 day of JUNE, 2006.


George J. Maurer, Ed.D., Executive Director
On behalf of the Board

Copies to:
Respondent's Attorney
Complainant's Attorney

IOWA BOARD OF EDUCATIONAL EXAMINERS

MALVERN COMMUNITY SCHOOLS,	)	Case No. 05-31
	)	DIA No. 06BEE001
Complainant,)	License No: 234881
)	
STEVE LANE,)	Order regarding
)	Proposed Decision
Respondent.)	

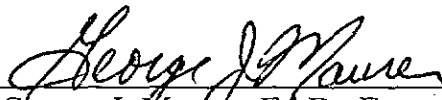
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ORDER

THEREFORE, the proposed decision in this matter will stand as the Board's final ruling in this matter unless a timely appeal from the proposed decision is initiated by one of the parties, pursuant to Board rule 282 I.A.C. 11.28(1).

Dated this 19 day of April, 2006.


George J. Maurer, Ed.D., Executive Director
On behalf of the Board

IOWA BOARD OF EDUCATIONAL EXAMINERS

MAR 27 2006

MALVERN COMMUNITY SCHOOL DISTRICT,	)	DIA NO. 06BEE001
	)	CASE NO. 05-31
COMPLAINANT,)	
	)	LICENSE NO. 234881
AND)	
)	
STEVE LANE,	)	PROPOSED DECISION
)	
RESPONDENT.)	

On August 30, 2005, Curtis A. Barclay, Superintendent of the Malvern Community School District (Complainant), filed a Complaint with the Iowa Board of Educational Examiners (Board) against Steve Lane (Respondent). On December 9, 2005, the Board found probable cause to order a hearing to determine whether Respondent had violated 282 IAC 25.3(5)(a)(2) or Iowa Code section 279.23 and 282 IAC 25.3. On December 19, 2005, a Hearing Notice was issued setting a hearing for January 30, 2006. The hearing was continued at Respondent's request. The hearing was later held before the undersigned administrative law judge on March 6, 2006 at 9:00 a.m. Complainant appeared for the hearing by telephone and was represented by attorney Andrew Bracken, who appeared in person. Respondent appeared in-person and was represented by attorney J. Matthew Anderson.

THE RECORD

The record includes the Complaint and attachments filed 8/30/05; the Hearing Notice and Proof of Service; Complainant Response, 1/19/06; Answer and Motion to Continue Hearing, filed 1/10/06; ALJ Letter to Parties, 1/13/06; Continuance Order; the testimony of the witnesses; and the following exhibits:

Complainant Exhibit 1:	Contract with Amy Karg, 2005-06 school year
Complainant Exhibit 2:	Karg Resignation, 6/28/05
Complainant Exhibit 3:	Minutes Malvern CSD Board of Directors, 7/11/05 and letter to Respondent, 7/12/05
Complainant Exhibit 4:	Letter dated 7/12/05 (Complainant to Karg)
Complainant Exhibit 5:	Letter, dated 7/18/05 (Karg to Malvern CSD)

- Complainant Exhibit 6: Minutes Malvern CSD Board of Directors, 8/15/05.
- Complainant Exhibit 7: Newspaper Article, 9/15/05
- Complainant Exhibit 8: CAL-O-Gram, September 2005
- Complainant Exhibit 9: Minutes, Malvern CSD Board of Directors, 9/19/05
- Respondent Exhibits A-C: not offered
- Respondent Exhibit D: Letter dated 9/28/05 (Complainant to Karg)
- Respondent Exhibit E: Contract With Administrator, 9/21/05

ISSUES

I. Whether Respondent violated 282 IAC 25.3(5)(a)(2) by asking a practitioner to sign a written professional employment contract when Respondent knew that the practitioner's employing school district had not released her from her teaching contract?

II. Whether Respondent violated Iowa Code section 279.23 and 282 IAC 25.3 by improperly allowing a practitioner to act as an administrator in his district without a written contract and before the practitioner had been released from her pre-existing teaching contract?

FINDINGS OF FACT

1. Respondent holds Iowa administrator license no. 234881 and is currently employed as the superintendent of the CAL Community School District (CAL CSD) in Latimer, Iowa. Respondent was previously employed as the superintendent at Malvern Community School District (Malvern CSD) in Malvern, Iowa for five years. Respondent voluntarily resigned his position as Malvern Superintendent in March 2004 and was replaced by Superintendent Curtis Barclay. (Testimony of Steve Lane; Curtis Barclay)

2. Amy Karg is a licensed teacher and a licensed administrator in the state of Iowa. During the 2003-2004 and 2004-2005 school years, the Malvern CSD employed Karg as a high school special education teacher. Karg completed her master's degree in March 2005 and notified the Malvern principal that she was applying for administrator positions for the following school year.

Karg's deadline to return her 2005-2006 teaching contract was May 12, 2005. By May 11th, Karg had not yet found an administrator position. Karg's union representative told her to

ask for an extension, but further advised her that if she did not get an extension and she found an administrator position, there was also a June 30th deadline.¹ Karg discussed her situation with Superintendent Curtis Barclay, and he told her that if she signed her teaching contract but found an administrator position by early June, he would recommend that the school board release her from her contract. Karg signed her 2005-2006 teaching contract on May 11, 2005 and told Barclay that she would return to teach at Malvern if she did not find a new position by the end of the school year. (Testimony of Amy Karg; Curtis Barclay; Complainant Exhibit 1)

3. Respondent was hired as the new superintendent for the CAL CSD, effective July 1, 2005. For the first time in the 2005-2006 school year, CAL CSD would have all of its students, preschool-grade 12, located in one building with a single principal. In early June 2005, the departing Malvern superintendent told Respondent that the CAL principal had resigned and asked if he could go ahead and advertise the opening. Respondent agreed. Respondent knew Amy Karg from his previous employment at the Malvern CSD and knew that she had completed her master's and was looking for a position as an administrator. Respondent told Karg about the principal opening at CAL CSD, and she applied.

CAL CSD received approximately 20 applications for the principal position, and a committee interviewed four persons, including Amy Karg. Respondent did not actively participate in the interviews, but he met with the applicants and gave them a tour of the community. The CAL CSD Board of Directors met on June 27, 2005 to decide on a principal. When the board's initial choice declined their offer, Karg was called and offered the position. Karg was excited about the offer but told the CAL board that Malvern CSD would still have to release her from her teaching contract. (Testimony of Respondent; Amy Karg)

4. Respondent admits he then sent Karg an employment contract for the CAL CSD principal position, which specified a \$50,000 annual salary. The contract was not offered into the record, but Respondent testified that the contract was void if it was not signed by a deadline of approximately July 8, 2005. Respondent did not specifically ask Karg to sign the contract. Respondent sent the contract with the understanding that Karg

¹ 282 IAC 25.3(5)"b"(2) essentially provides that the Board of Educational Examiners will not sanction a practitioner for abandoning a professional employment contract so long as the practitioner provides notice of resignation no later than June 30.

would sign it only after she was released from her Malvern teaching contract. Respondent believed that Karg would be released because when he was superintendent at Malvern, its Board of Directors had released at least two practitioners, a secondary principal and a Spanish teacher, after the school year ended. (Testimony of Respondent; Amy Karg)

5. On June 28, 2005, Amy Karg drove to Malvern, hoping to personally deliver her resignation letter to Superintendent Barclay. However, no one was working in the administration office that day, so Karg sent the resignation letter by certified mail from the Malvern post office to ensure its delivery the following day. Karg also left a voice mail message for Barclay, telling him that her resignation letter was in the mail and asking him to call her to discuss it. Barclay had been on vacation but stopped at the office to check the mail on June 30, 2005. He found Karg's resignation letter and returned her call. Barclay told Karg that he understood her desire to advance professionally, but that he would not recommend her release because it would be difficult to find a quality special education teacher to replace her so late in the year. Since she did not have a release, Amy Karg did not sign or return the first CAL CSD employment contract, and it presumably expired. (Testimony of Amy Karg; Curtis Barclay; Respondent; Complainant Exhibit 2)

6. Superintendent Barclay called Respondent and suggested that Malvern CSD might be willing to release Karg, but only pending finding a suitable replacement. Respondent told Barclay that would not work for the CAL CSD. Karg appeared at the Malvern school board's July 11, 2005 meeting to request release from her contract, but the Malvern board refused to release her. Karg was upset by their response. (Testimony of Curtis Barclay; Respondent; Susan Stogdill; Amy Karg; Complainant Exhibit 3)

7. On July 12, 2005, Superintendent Barclay wrote to both Respondent and Amy Karg, officially notifying them that the Malvern CSD had voted unanimously not to accept Karg's resignation or to release her from her contract, due to the difficulty of finding a suitable replacement. Barclay reminded both Respondent and Karg of their ethical obligations to honor existing contracts. (Testimony of Curtis Barclay; Respondent; Amy Karg; Complainant Exhibits 3, 4)

8. Respondent then contacted the Executive Director of the Board of Educational Examiners, who reportedly told Respondent that the Board honors the June 30th deadline for submitting

resignations. He also called Kathy Collins, the legal advisor for the School Administrators of Iowa, and the attorney for the CAL CSD. Both advised Respondent that he could not offer Amy Karg a contract until she was released from her teaching contract with the Malvern CSD. (Testimony of Respondent)

9. After receiving Superintendent Barclay's July 12th letter, Respondent individually approached two members of the CAL CSD Board of Directors to discuss whether they should consider offering the principal position to one of the remaining two finalists. Both felt that Amy Karg was the right choice and felt that any other quality candidate would have the same issues with an existing contract. They decided to wait to see if Karg would eventually be released from her contract. Respondent told Karg that if Malvern released her, she would be offered an employment contract for the principal position at CAL CSD. (Testimony of Steve Lane)

10. On July 18, 2005, Amy Karg notified the Malvern CSD, in writing, that she did not intend to return to Malvern for the 2005-2006 school year, "even though I have no prospects in education at this time." Karg cited 282 IAC 25.3(5)"b"(2) as support for her position that she had complied with her ethical obligations by submitting her resignation by June 30. Karg advised the school district that they should immediately begin searching for her replacement and offered to assist the district to make a smooth transition. (Testimony of Curtis Barclay; Amy Karg; Complainant Exhibit 5)

11. On or about July 20, 2005, Superintendent Barclay called the CAL CSD office and spoke to a person he assumed was the school secretary. However, it is unclear who answered the phone since the school secretary did not start work until August 1. The person answering the phone told Barclay that Amy Karg was the new principal, but she was not in the office. (Testimony of Curtis Barclay; Respondent)

12. On August 15, 2005, the Malvern CSD authorized Superintendent Barclay to file professional practice complaints against Respondent and Amy Karg² and to bill Karg for the costs of advertising for her replacement. (Testimony of Curtis Barclay; Complainant Exhibit 6)

² The Board of Educational Examiners later dismissed the complaint against Amy Karg, presumably because she submitted her resignation prior to June 30th. See 282 IAC 25.3(5)"b"(2).

13. Amy Karg moved from Clarinda to Latimer on or about August 1, 2005 and enrolled her two children in the CAL CSD for the 2005-2006 school year. Karg and her husband kept their home in Clarinda, and her husband continued to work in Clarinda. Karg expected that the Malvern CSD would find a replacement for her since she told them she would not return in the fall and thought she would be released from her Malvern contract before school started. Nevertheless, Karg acknowledges she was taking a calculated risk since she did not have a signed contract at CAL and did not have a release from Malvern.

In the meantime, Karg knew that the CAL CSD was going through a lot of changes with the consolidation of all grades into one building, and she wanted to get oriented to the school district and its schedule. Karg met with CAL CSD staff, students, and members of the community in August and early September 2005, and actually worked in the office at least part-time and was provided use of a desk, a computer, and an email account. Karg volunteered to work without pay and received no promises that she would be paid for any work performed prior to signing the contract. Karg continued in this capacity after school started on August 25th and admits Respondent introduced her as the new principal. Many of the staff members were unaware of Karg's contract issue. (Testimony of Amy Karg; Respondent)

14. In early September 2005, the Malvern CSD found a full-time special education teacher to replace Amy Karg. Karg's replacement started teaching on September 6, 2005, nine days into the school year. A friend told Karg that Malvern had found a replacement.

In early September 2005, Karg wrote an article for the CAL-O-Gram School Newsletter entitled "A Note From The Principal's Office." On September 14, 2005, an article appeared in the local newspaper announcing that Karg was the new principal. Curtis Barclay received copies of the CAL-O-Gram and the newspaper article before the Malvern school district released Karg from her teaching contract. (Testimony of Amy Karg; Curtis Barclay; Respondent; Complainant Exhibits 7, 8)

On September 19, 2005, the Malvern CSD Board of Directors voted to release Amy Karg from her contract and also voted to approve the teaching contract for her replacement. (Testimony of Curtis Barclay; Amy Karg; Complainant Exhibit 9; Respondent Exhibit D)

15. On September 20, 2005, Amy Karg told Respondent that she had been released from her Malvern contract. On September 21,

2005, Karg and the CAL CSD signed a written contract for Karg to be employed as an administrator, commencing on September 21, 2005. The contract provided a salary of \$50,000 and a signing bonus of \$5,000. Karg did not negotiate the bonus and testified that it was a surprise. On September 28, 2005, Superintendent Barclay officially notified Karg that she had been released from her contract. (Testimony of Curtis Barclay; Amy Karg; Respondent Exhibit E)

CONCLUSIONS OF LAW

The legislature created the Board of Educational Examiners and delegated to it exclusive licensing authority, including the authority to develop a code of professional rights and responsibilities, practices, and ethics, which shall, among other things, address the failure of a practitioner to fulfill contractual obligations under section 279.13... Iowa Code section 272.2(1)(a) (2005).

In a case alleging the failure of a practitioner to fulfill contractual obligations, the person who files a complaint with the Board, or the complainant's designee, shall represent the complainant in a disciplinary hearing conducted in accordance with this chapter. Iowa Code section 272.2(4) (2005).

Iowa Code section 279.13(2) (2005) provides, in relevant part:

...A teacher who has not accepted a contract for the ensuing school year tendered by the employing board may resign effective at the end of the current school year by filing a written resignation with the secretary of the board. The resignation must be filed not later than the last day of the current school year or the date specified by the employing board for return of contract, whichever occurs first...

Iowa Code section 279.23(2005) provides, in relevant part:

279.23 Continuing contract for administrators.

1. Contracts with administrators shall be in writing and shall contain all of the following:

...
d. A statement that the contract is invalid if the administrator is under contract with another board of directors in this state covering the same period of time, until such contract shall have been released or terminated by its provisions.

....
2. The contract shall be signed by the president and the administrator and shall be filed with the secretary of the board before the administrator enters upon performance of the contract...

Pursuant to its statutory authority, the Board has promulgated the Code of Professional Conduct and Ethics at 282 IAC chapter 25. 282 IAC 25.3 provides, in relevant part:

282-25.3(272) **Standards of professional conduct and ethics.** Licensees are required to abide by all federal, state, and local laws applicable to the fulfillment of professional obligations. Violation of federal, state or local laws in the fulfillment of professional obligations constitutes unprofessional and unethical conduct which can result in disciplinary action by the board. In addition, it is hereby deemed unprofessional and unethical for any licensee to violate any of the following standards of professional conduct and ethics:

25.3(5) **Standard V- violations of contractual obligations**

a. Violation of this standard includes:

....
(2) Asking a practitioner to sign a written professional employment contract before the practitioner has been unconditionally released from a current contract. An administrator shall make a good faith effort to determine whether the practitioner has been released from the current contract.

(3) Abandoning a written professional employment contract without prior unconditional release from the employer.

....
b. In addressing complaints based upon contractual obligations, the board shall consider factors beyond the practitioner's control. For purposes of enforcement of this standard, a practitioner will not be found to have abandoned an existing contract if:

....
(2) The practitioner provided notice to the employing board no later than the latest of the following dates:

....
3. June 30.

I. Whether Respondent violated 282 IAC 25.3(5)(a)(2) by asking a practitioner to sign a written professional employment contract when Respondent knew that the practitioner's employing school district had not released her from her teaching contract?

Respondent admits that he sent a written professional employment contract to Amy Karg in late June or early July 2005, before she was released from her Malvern teaching contract. It appears that Karg and Respondent both initially assumed that CAL CSD would release her from her contract as long as she resigned by June 30th. They failed to understand that Malvern's decision whether to release Karg from her contract was a separate issue from whether the Board would sanction Karg for abandoning her contract. However, Respondent and Karg both credibly testified that they understood she could not sign the CAL contract until after the Malvern CSD unconditionally released her. Indeed, Karg did not sign this contract and it presumably expired. While it certainly could be argued that sending a written contract to a job applicant is the same as verbally asking the person to sign the contract, the preponderance of the evidence did not support the conclusion that either Respondent or Amy Karg thought she was being asked to sign a new contract before she was released from her old contract. The evidence does not support a violation of 282 IAC 25.3(5)"a"(2).

II. Whether Respondent violated Iowa Code section 279.23 and 282 IAC 25.3 by improperly allowing a practitioner to act as an administrator in his district without a written contract and before the practitioner had been released from her pre-existing teaching contract?

The preponderance of the evidence established that Respondent improperly allowed Amy Karg to act as an administrator for his district before she was unconditionally released from her prior contract, in violation of Iowa Code section 279.23 and 282 IAC 25.3. Teachers and administrators cannot be under contract to two districts at the same time. Iowa Code section 279.13, 279.23(2005) Moreover, state law specifically provides that contracts with administrators must be in writing and must be signed and filed with the board's secretary before the administrator enters upon performance of the contract. Iowa Code section 279.23(1), (2) (2005). This statutory provision essentially closes any loophole that might permit an administrator to perform work as an administrator for one district without a written contract while remaining under written contract to a second school district.

Respondent told Amy Karg that she would be given a contract for the principal position when she was released from her teaching contract with Malvern. Karg told Malvern CSD that she would not be returning, even if they refused to release her, thereby forcing Malvern to seek her replacement. It is clear that both Karg and Respondent expected Karg to eventually sign a contract with CAL. Karg moved to Latimer with her two children on or about August 1, 2005 and enrolled her children in the school district. She functioned as the principal in the CAL CSD in August and early September 2005, even though she was not under a written contract to CAL and had not yet been released from her Malvern teaching contract. Karg was present in the CAL building at least part-time and had a desk, a computer, and an e-mail account. She met with staff, students, and members of the community and represented herself to them as the new principal. Moreover, when she eventually signed a written contract, it was for more than the annual salary originally offered to her and essentially compensated her for her unpaid work prior to signing the contract. These facts establish a violation of Iowa Code section 279.23 and 282 IAC 25.3.

III. Sanction

Board rules provide for a range of sanctions, including but not limited to license revocation, license suspension and a public letter of reprimand. 282 IAC 11.33. To my knowledge, this is an issue of first impression for the Board. Both parties agree that the factual circumstances merit only a minor penalty. The Board of Educational Examiners has typically issued a public letter of reprimand to a practitioner for a first violation of 282 IAC 25.3(5)"a"(3), absent significant mitigating or aggravating factors. A similar penalty is warranted here.

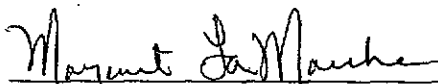
ORDER

IT IS THEREFORE ORDERED that Respondent Steven Lane shall be issued a public letter of reprimand for allowing a practitioner to act as an administrator in his school district while she was still under contract to another school district in the state of Iowa, in violation of Iowa Code section 279.23 and 282 IAC 25.3.

282 IAC 11.28 provides that a proposed decision may be appealed to the Iowa Board of Educational Examiners (Board) by a party who is adversely affected by the decision. An appeal is commenced by serving a notice of appeal on the Board within 60 days after the issuance of the proposed decision. The notice of appeal must be signed by the appealing party or a representative

of that party, and must contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision and order, the relief sought, and the grounds for relief.

Dated this 27th day of March, 2006.



Margaret LaMarche

Administrative Law Judge

Division of Administrative Hearings

Iowa Department of Inspections and Appeals

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cc: J. Mathew Anderson

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George J. Maurer, Ed.D., Executive Director

Iowa Board of Educational Examiners

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